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In This Issue

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VOL. 27 JUNE, 1952 No. 9

THE PENALTY OF BIGNESS

By Stevens Fargo
President, Los Angeles Bar Association

Stevens Fargo

THERE are many advantages in a large and powerful Bar association such as ours. We can spread our activities into many fields; staff our committees with skilled experts, speak with authority on public questions; bring before us noted speakers and programs which are the products of huge labor. A competent office provides the continuity necessary in carrying through major programs.

The very efficiency of our organization makes us subject to the danger of becoming impersonal; a danger of which your officers are very much aware. We are determined that participation of members be even wider than it has been in committed activities. We hope that every member who wants a part in association work can be used somewhere, and more important, that more of our members want to take part. Most of all, we want our members to have some fun out of their association.

In the month of June we are trying an innovation. Instead of the usual monthly meeting at noon, held downtown, we are holding an old-fashioned picnic at Griffith Park starting at three p. m., Friday, June 13th. It will be our last meeting until fall and will be well attended by the bench, and furnish a fine chance to watch the Junior Barristers' ball game, visit and have supper together outdoors. No speeches or formality, of course. I hope it will be so successful that it may be repeated every spring, and help to make more personal the relations between the bench and the bar, and among our lawyers themselves.

LOS ANGELES BAR BULLETIN GIVEN THE NOD BY INDEX TO LEGAL PERIODICALS

We are happy to announce that the national Index to Legal Periodicals will henceforth include the LOS ANGELES BAR BULLETIN in the same manner that a very select number of other local bar association publications are covered. That is to say, substantial leading articles which are not strictly local or newsy in character will be indexed. Therefore we are most happy to receive original articles of great distinction and general interest, since they have reference value throughout the nation.—EDITOR.

TAXATION REMINDER SALES TAX IN PROBATE

(This is another in the series of brief statements intended as tax refresher notes for the assistance of lawyers in general practice. In the interest of brevity, the notes are not necessarily exhaustive of the subjects mentioned, but rather are intended to direct attention to the tax subjects.)

How many times have you, as attorney for an executor or an administrator of an estate, suggested that it might be necessary for him to obtain a seller's permit under the California Sales and Use Tax Law? Although this suggestion may seem most unusual to the representative, it may be that the sales of tangible personal property made by him during the administration of an estate are subject to the sales tax.

For example, the average estate in probate has listed in its inventory one or two automobiles, some jewelry or clothing, and miscellaneous household furniture. If the executor or administrator should make three or more sales involving this typical property, in any twelve-month period, he might be classified as a "retailer" and should possess a seller's permit.

The State Board of Equalization has indicated, through an interpretative ruling, that the 1951 statutory codification of a former administrative ruling is not to be taken too literally. The Board's position is undoubtedly based on administrative practicability, inasmuch as it is only when the sales are "in substantial amounts" that the executor or administrator will be considered a "seller" and subject to tax with respect to all retail sales made. However, sales in "relatively small" amounts are not disregarded, but it takes a greater number of such sales before the represen-

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PECULIARITIES OF PATENTS AS PROPERTY*

By Bruce B. Krost
of the Cleveland Bar

THE inclination to regard patents like other property in all respects can cause trouble for the unwary. For example, it is generally believed that several persons owning a patent in common are bound to account to each other for proceeds from the patent as partners would ordinarily account to each other. Another frequent misconception is that in purchasing a patent, the Patent Office transfer records may be wholly depended upon to disclose all outstanding rights and encumbrances. Also, many believe that one purchasing a patent or acquiring a license under it automatically has a right to make and sell the patented device. These mistaken views result from failing to take into account some of the peculiarities of patents as property.

There are some aspects of patents as property that should be known by lawyers in general practice. This is important for the protection of their clients' interests in many transactions involving patent rights.

For example, in the case of a patent owned jointly by Black and White, the question may arise as to the responsibilities of Black and White to each other. Suppose Black, the one joint owner, alone goes into the manufacture of the patented device and makes a profit. Must Black pay any of the profits to White? Suppose Black, alone, grants a license to a third party and receives substantial royalties. Must Black share the royalties with White? Suppose Black, alone, sells his interest to a third party not agreeable to White. May White prevent this? The common belief is contrary to the law on the subject.

Dangers of Joint Ownership

Actually under the law, Black and White do not account to each other and each may go his own way without regard to the other. Each may manufacture and sell the patented device and retain all the profits. Each may license third parties and keep all of the royalties received. One joint owner may, if he wishes, grant free licenses to the competitors of the other joint owner. The interest of each joint owner may be sold by him to anybody he chooses and the other joint owner cannot prevent it.

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*Reprinted from the *Cleveland Bar Journal*.

In short, joint owners of a patent are at the mercy of each other! There is no duty of accounting between them under the requirements of patent law.

The question might be asked as to whether the legal situation would be changed if Black owns a one-tenth (1/10) part of the patent and White owns a nine-tenths (9/10) part. The answer is that the percentage of ownership does not make any difference. The ownership is joint in that each owns an undivided fractional interest in the patent and each is entitled to exercise all the rights of ownership. Generally, it is just as advantageous and disadvantageous to own an undivided one-tenth part as a nine-tenths part. About the only time that the amount of the fractions might be considered would be when a judgment against an infringer has been collected and the court is apportioning the collected judgment among the joint plaintiffs. (All joint owners must join in a suit against infringers.)

When a patent is owned by two or more persons, each of them always has an undivided fractional interest in it. It is not possible to partition a patent among joint owners, either voluntarily or by court proceedings, as real property may be partitioned. It is legally possible to partition a patent geographically so that one person owns the patent in one territory and another owns it in other territory. However, this is not usually practical and is rarely done. In the same territory, usually the whole country, ownership of a patent by a plurality of persons is always joint and each has an undivided fractional part of the whole.

How Joint Ownership Arises

If the dangers of joint ownership of a patent are so great, how does it happen that the relationship is ever established? There are several ways in which joint ownership of a patent arises, and in some, the relationship could not have been avoided. For example, in the case of joint inventorship, that is, when the invention was conceived by two or more persons working together and their invention was jointly produced, then the patent (in the absence of an assignment) issues to them as joint owners. If Black and White were joint inventors, then Black and White become joint owners of the patent issued on their invention. Here the law provides for joint ownership without spelling out any fractional interest held by each.

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THE AVAILABILITY OF LOCAL ORDINANCES

Milnor E. Gleaves

THE current status of a city or county ordinance is frequently the turning point of a lawsuit, either during its preparation in the office or at trial. To find the local law, however, is often harder than to analyze it. Some progress is being made in the direction of simplification and availability by several local governmental bodies within the Los Angeles metropolitan area which should be both of interest and concern to the practicing lawyer.

The production of municipal ordinances and ordinance amendments can be a prolific matter, depending upon the size of the city. The Los Angeles City Council, for example, amends its city code almost daily, in an effort to keep abreast of municipal problems. Upon the city clerk, in most instances, falls the duty of compiling these changes and making them physically available to city officers and the general public.

The example of the City of Los Angeles is typical of the problem involved, both from the viewpoint of city administration and from that of the inquiring lawyer or layman. After an ordinance is enacted, the City Clerk receives it and causes it to be published. From the publisher, reprints of the ordinance are received back, and these reprints are then cut out and pasted into a large master scrapbook, and indexed. This is the clerk's ordinance file. Thereafter, as amendments are passed which supplement or change the original ordinance, reprints are inserted, with necessary identification and cross-reference notes being added in blue pencil. The scrapbook is kept at the clerk's office, and is there available for reference. Separate reprints of ordinances of general interest are also available for distribution free of charge. These must be picked up in person, however, since there is no mailing-list service for anything but the daily proceedings of the City Council.

All too frequently, however, the lawyer wants to compare the present state of an ordinance with its contents at an earlier date. While such a comparison as to the licensing and sales tax ordinances of the City of Los Angeles can be quickly made, a detailed

search through the scrapbook must be made in the case of other ordinances, and in some instances such a comparison is impossible where the old reprint has been removed.

On the other hand, the municipal codes of several Southland cities* have been made available in current form through looseleaf volumes of ordinances similar to tax and other services now in wide use. These volumes are distributed to those city officers having use for them, and usually to the city library. In addition, they are offered for sale to anyone interested, at prices ranging from ten to twenty-five dollars, the sum including a subscription to all amendment inserts for one year. The County of Los Angeles has compiled its Licensing Ordinance in similar form for official use, and while copies have been made available to the County Law Library, no provision has been made for public sale as yet. Plans for a similar compilation of the County Traffic Ordinance and the Administration Code are being studied by the Clerk of the Board of Supervisors, and other ordinances may follow as funds are made available.

Probably the greatest deterrent to the cities in these matters is that of cost, for such looseleaf services are expensive to initiate as well as to maintain. On the other hand, old-fashioned methods of keeping the ordinances available, however diligent the efforts of the clerks, actually and effectively render unjust the presumption that every citizen—including every lawyer!—knows the law. One effective method of bringing more general progress in the field is the creation of a demand by the public for modern methods of making local laws available. That body of the general public most concerned with the problem appears to be the legal profession. The Committee on Administrative Law of the Los Angeles Bar Association has had the matter under study during the past year, and the cooperation of local bar associations is earnestly sought in an effort to make the need known to the governing bodies of our several municipalities. Inasmuch as the lawyers' need for up-to-date ordinance services is probably greater than any other similar group, it would appear equitable that the lawyers themselves, as well as any other interested parties, bear some of the cost of such a service through private subscription. Such a demand, focussed through local bar groups, may be the

*Burbank, Monterey Park, Santa Monica.

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PRACTICING LAW BY TELEPHONE*

By Shippen Lewis
of the Philadelphia Bar

ONE of my lawyer friends once attended a meeting of four lawyers in an older man's office. In the middle of their discussion of the troubles of an insolvent the host called his insurance broker on the telephone and inquired about a policy covering his household furniture, while the others sat breathless at this magnificent display of brass.

Another lawyer friend found a case important enough to warrant a trip to talk to a lawyer in Atlantic City rather than a letter or a telephone call. While the Atlantic City lawyer and the Philadelphia lawyer were talking face to face, a third lawyer telephoned from Philadelphia and the original caller then amused himself for forty minutes in his host's library while the other two discussed their case and not his.

Very recently I went to a lawyer's office by appointment to talk about our respective clients' positions, and twice in less than half an hour I had to sit back and listen to fairly protracted telephone conversations about matters which certainly were not of instant importance.

We have not yet developed well-established conventions about the telephone, and we naturally follow the easiest path. If the telephone rings we run to it, or seize it if it's on the desk by our side, and then the telephone conversation takes precedence of everything else on the agenda. That's the way it used to be in my house when I was a young boy and the telephone was first put in. For office practice, I suggest that, except in unusual circumstances, when someone takes the trouble to go to a lawyer's office to talk to him, the lawyer should tell his telephone operator to hold all calls during the interview, and if there is no telephone operator that the host should answer any call by asking if he may call back later.

Another adjustment that I think would help us all is not to insist always on talking over the telephone to the man you want to reach. For instances, you want to tell the eminent Jonas Throttlebottom, Esq., that the amount of mortgage is five hundred thousand dollars. (It's more fun in an article to write above five

*This article first appeared in the June, 1945, issue of *The Shingle*, the monthly bulletin of the Philadelphia Bar Association. In response to many requests it was reprinted in the February, 1952, issue of *The Shingle*.

hundred thousand dollars than about five thousand dollars.) You call Mr. T. and find that he is out, so you leave a call. An hour later he calls you with the same result. Theoretically, this can go on so long as you both do live, with profit only to the telephone company's stockholders and the United States Treasury. How much easier for both of you if you leave a message the first time . . . "Tell Brother Throttlebottom that the mortgage is half a million." This sounds like advising a child not to put beans up his nose or advising a lawyer to check his hat outside the Supreme Court room. But many a lawyer continues to pursue his victims by telephone until he has himself delivered the message to the destined ears, no matter how trivial it may be.

In fact I would go further and encourage sending many messages through others. If the man you are trying to reach has a stenographer or a private secretary (the difference depending on relative affluence), whether he is a lawyer or a business man, he will usually be relieved whenever a message can be taken for him.

Somtimes, when you call up an office and ask for Mr. Coke, the telephone operator says, "Who is it, please?" You naturally give your name. Then, as like as not, she comes back with, "I'm sorry, Mr. Coke is out just now; can I take a message?" Of course, you want to say, "Well, why did you ask me my name then?" I suggest that the telephone operator could be told by her employer to reverse her patter—first say that the boss isn't in, and then ask if the caller cares to leave his name and perhaps a message.

Everyone remembers playing Last Tag in childhood. Grown-up lawyers play this in reverse through their telephone operators.

"Mr. L. T. Martin is calling Mr. Simpson, Jr."

"Put Mr. Martin on, please."

"Thank you, I'll wait until Mr. Simpson is on."

"I'm sorry (or as they say in Hollywood, 'I'm sawry'), but I can't put Mr. Simpson on until Mr. Martin is on."

This Amazonian struggle can go in indefinitely, while the innocent principals go about their usual business. Finally the Martin warrior wins and Mr. Simpson is triumphantly hauled to the telephone before Mr. Martin. By this time Martin has forgotten that he put the call in and has wandered off to look up

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Assistant Reference Librarian
Los Angeles County Law Library

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most practical way to encourage the governmental bodies to break away from old and unusable practices of ordinance compilation.

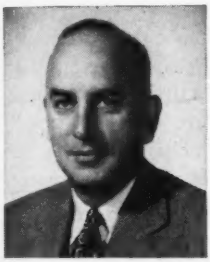
MILNOR E. GLEAVES,
Deputy County Counsel,
Member of the Committee of Administrative Law,
L. A. Bar Association.

The State Bar of **Texas** has purchased a site in Austin upon which it plans to erect a permanent headquarters building.

Issue Editor—Stanley C. Anderson

Silver Memories

Compiled from the World Almanac and the L. A. Daily Journal of June, 1927, by A. Stevens Halsted, Jr.



A. Stevens Halsted, Jr.

A HOME of its own will be the accomplishment of the Los Angeles Bar Association this year if the plans of President **Kemper Campbell** materialize. The Association has long cherished the dream of having its own building which will add to its prestige, cement the members of the bar and create a feeling of fraternity and solidarity.

* * *

A. George Bouchard of Washington has been named to succeed **Dana Latham** as the Pacific Coast counsel for the Bureau of Internal Revenue. Mr. Latham has resigned to enter private practice with the Washington law firm of Miller, Chevalier & Latham. He will be in charge of the Los Angeles office of the firm.

* * *

The U. S. Cruiser "Memphis," with Col. **Charles A. Lindberg** aboard, arrived at the Washington Navy Yard from Cherbourg with the "Spirit of St. Louis" boxed-up on the deck. The cruiser was saluted with 21 guns and accompanied by airplanes and the dirigible Los Angeles. In ceremonies later at the Washington monument, a vast crowd gathered while President Coolidge pinned on the Colonel the Distinguished Flying Cross,—the first recipient of this medal. The Colonel in a brief speech radioed all over the world, said he brought back from France and all Europe a message of peace and good-will. At a dinner, where he received 52,000 telegrams and air messages, the Colonel predicted Atlantic flying inside 10 years.

Charles E. Cropley has been appointed clerk of the U. S. Supreme Court succeeding the late **William R. Stansbury**, who served the court through forty-five full terms.

* * *

A meeting of the Los Angeles Bar Association was held to celebrate the passage of the several bills which were sponsored by the Association at the recent session of the Legislature. Governor **C. C. Young** was one of the guests. **Jefferson P. Chandler** spoke on the "Incorporation of the Bar," describing the new State Bar Act. Commenting on the significance of the increase in judicial salaries, **Thomas C. Ridgway**, president of the California Bar Association, also spoke. Other individuals who addressed the group were **Alfred L. Bartlett, W. Joseph Ford** and **Tom Mix**, motion picture star. Members of the committee in charge of the affair included **Frank G. Tyrrell, Constance Leitch, W. Turney Fox, Leo Rosecrans, Maurice Saeta** and **Kimpton Ellis.**

* * *

President Coolidge, wife and party, left Washington for Custer State Park, South Dakota, which is to be the Summer White House.

* * *

With the appointment of Professor **James Patterson McBaine**, former dean of the law school of the University of Missouri, the School of Jurisprudence of the University of California now occupies a unique position among the country's law schools in having five deans on its faculty. Professor **Henry Winthrop Ballentine** was formerly dean of the University of Montana Law School from 1911-1913, and dean of the College of Law of the University of Illinois from 1916 to 1920. Professor **George P. Costigan, Jr.**, occupied the position of dean at the University of Nebraska from 1907 to 1909. Professor **Dudley O. McGovney** was dean of Tulane University Law School from 1913 to 1914, and dean of the College of Law of the University of Iowa from 1916 to 1921. Professor **Orrin K. McMurray** has been dean of the School of Jurisprudence since 1923.

* * *

During this month four records in aviation have been estab-

(Continued on page 348)

Brothers-In-Law

By George Harnagel, Jr., Associate Editor

George Harnagel, Jr.

THE **Utah** Bar Association holds its annual convention at Canyon Lodge, Yellowstone Park, on June 20, immediately following the close of the regional meeting of the American Bar Association scheduled for the same place. The latter is the first regional meeting of the ABA to be held in the intermountain area.

* * *

"Our profession, fundamentally, is one of service rather than of profit. Every member of it owes part of his time to clients in need of legal service who cannot pay for it. Often a lawyer may best serve that client by referring him to a legal aid society which a lawyer helps to support. But if the lawyer neither renders the service himself nor insures its adequate rendition by others, he is unfaithful to his profession and to his community."—Mr. Justice Harold H. Burton.

* * *

Inter-professional cooperation . . . The Rocky Mountain Chapter of the American Society of Chartered Life Underwriters is assisting the Junior Bar Sections of the **Denver** and **Colorado** Bar Associations and the College of Law of the University of Denver in sponsoring an Institute on Estate Planning.

* * *

The judges of the **Ohio** Supreme Court submitted to a 45 minute quiz session on appellate procedure during a recent luncheon meeting of the Dayton Bar Association.

* * *

Can we match (or outmatch) this in Southern California? . . . Down in **Montgomery, Alabama,** three members of the firm of Steiner, Crum & Baker are Robert E. Steiner, Robert E. Steiner, Jr. and Robert E. Steiner III, father, son and grandson. Incidentally, all are graduates of the same law school: Harvard.

The University of **Kansas** has set up a Law Research and Extension Center "to engage in worthwhile and extensive legal research and promote the continuing legal education of the bar." One of its first projects is an evening lecture course in the field of Labor Law and Relations.

* * *

"Of the 200,000 lawyers in the United States, only a comparatively small number—500—are labor union attorneys. Of this number approximately 50 are house counsel for a labor organization."—*Report on Labor Union Lawyers for the Survey of the Legal Profession.*

* * *

A new social-legal organization has been formed in **Canton, Ohio.** Membership is limited to attorneys who have their offices in the First National Bank Building of that city and who have been practicing less than five years. It has a charter membership of 25 and has adopted the name "Junior Bar of the First National Bank Building."

* * *

The Editor's Uneasy Chair

Getting out this magazine is no picnic.
If we print jokes, people say we are silly.
If we don't they say we are too serious.
If we stick close to the office all day
We ought to be around hunting material.
If we go out and try to hustle,
We ought to be on the job in the office.
If we don't print contributions
We don't appreciate genius;
And if we do print them the magazine is filled with junk!
If we edit the other fellow's write-up we're too critical;
If we don't we're asleep.
If we clip things from other magazines,
We are too lazy to write them ourselves.
If we don't we are stuck with our own stuff.
Now, like as not, some guy will say
We swiped this from some magazine.
—*That's right, we did.* From the **Wisconsin** Bar *Bulletin.*

PATENTS AS PROPERTY

(Continued from page 322)

Another way in which joint ownership and its attendant dangers may arise is in the case of inheritance of a patent through a will or by intestate succession. If a father at death leaves a patent to his sons, Black and White, they thereby become joint owners and hence each is subject to the risks inherent in undivided plural ownership of a patent.

A common situation in which joint ownership is created and yet which could be avoided is by means of assignments. If Black is the owner of full title to the patent and assigns an undivided fractional interest (such as 1/2 to 1/10 interest) to White, then thereafter Black and White are joint owners. Similarly, if a third party first owned the patent completely and assigned a fractional interest to Black and the remaining interest to White, then thereafter Black and White are joint owners.

Confusing the rights of corporate control through a majority of stock ownership, some persons mistakenly attempt to provide that Black have 51 percent interest and White have 49 percent interest in the patent. However, this precaution has no value as the owner of one-tenth of one percent interest of a patent can do everything that the owner of the remaining interest can do.

How to Avoid Dangers

What steps may be taken, in serving your clients faced with the problem to avoid the dangers and risks of joint ownership of a patent? Starting with the assumption that Black and White presently are joint owners (through joint inventorship, inheritance, or assignment), what can you advise them to do to minimize the risks inherent in undivided ownership by a number of persons? There are several arrangements that might be utilized to meet the situation, namely, (a) by making a contract between the joint owners, (b) by forming a corporation to hold title, and (c) by appointing a trustee to hold title. Each of these methods has its advantages and disadvantages.

Avoidance by Contract

A quite common and rather expedient manner of meeting the problem is by way of a contract between all the joint owners. For instance, a contract may be entered into between Black and White, jointly owning between them the full title to the patent,

wherein Black and White agree upon common action and upon their respective rights. The contract you draft may provide that they will agree that neither will grant a license nor convey his rights to third parties without the written consent of the other, that they will consult and act in common on all matters involving the patent, that all proceeds received from the patent will be divided in a certain ratio, such as half to each one, and that they will abide by such other protective covenants as may be expressed.

The method of attempting to meet the problem of joint ownership by a contract between the owners is open to some drawbacks. A disadvantage is that the contract is binding upon the joint owners who enter into the contract but is not binding upon third parties, particularly those without notice of the contract. Thus, Black, who agreed by contract with White that he would not alone grant licenses to third parties, in breach of that contract, may grant a license to Brown. Black becomes guilty of breach of contract and an action lies against him by White for the breach, but the license to Brown is nevertheless valid and continuous in force. Notwithstanding this possibility, the handling of the problem of joint ownership by a contract between the parties is often the most practical and feasible solution. If the joint owners are responsible parties and if large numbers of patents or large sums of money are not involved, then the use of a contract between the joint owners of a patent may be an acceptable working arrangement for your clients.

Avoidance by Corporate Ownership

Another arrangement that you might suggest for handling of patents to avoid the risks of joint ownership is by having the patents owned by a corporation. By this arrangement, you form a corporation, "B. W. Patent Holding Corporation" for Black and White, the joint owners, and they then assign their interests in the patent to the corporation. The corporation thus holds full title. Black and White may own stock in the corporation in any proportion agreed upon, but thereafter neither shares ownership in the patent. Of course, their control is through their stock ownership in "B. W. Patent Holding Corporation."

Some caution should be exercised in using the mechanics of a corporation for holding title to patents because of the provisions of the personal-holding company sections of the income tax statutes (26 U. S. C. 500-511). The heavy tax rate applicable in

some instances to small corporations collecting royalties from patents makes it extremely important that you carefully consider the tax laws when weighing the use of the corporate arrangement for holding title to patents. As always, of course, the matter of double taxation upon royalties received as income by a corporation should be considered. The necessity for the corporation to pay an income tax upon patent royalties received, and for the stockholder to pay again an income tax upon the remainder reaching him as a dividend, may discourage the use of a corporation to hold title to a patent as a device for avoiding the dangers of joint ownership of the patent.

Whether or not the manufacturer of the patented devices, either as a licensee or as owner of the patent, should operate commercially in the corporate form or as a proprietorship or partnership, depends upon tax aspects and practical considerations, such as limitations on personal liability. These tax aspects and practical considerations are factors in addition to the peculiar nature of patents here discussed upon which your judgment will be based.

Black and White might ask you, if they assign their respective

interests in the patent to a corporation, whether they may lose all their rights if the corporation should later become bankrupt. This possibility of loss can be avoided by the inclusion of a defeasance clause in the assignment instrument providing that upon bankruptcy of the corporate assignee, or upon the happening of any other stipulated contingency, the title shall automatically revert to the assignor.

Parenthetically, it might be noted that mortgage assignments ought to be used oftener than they are as substitutes for license agreements. The possibility of taking advantage of the capital gains tax provisions of the income tax law (26 U. S. C. 117) then would seem to be greater than when some types of license agreements are used. In any event, the tax aspects should be considered in choosing the use of an assignment or of a license in a patent transaction. Whether or not an instrument is a license or is an assignment does not depend upon the name or label affixed to it, but rather upon the legal nature and effect of its provisions.

Title Held by Trustee

A third possible arrangement you can use in aiding your client to meet the dangers and risks of joint ownership is by having full title in the patent held by a trustee. Under this arrangement, the several joint owners assign their respective interests to a trustee agreed upon by them. The trustee then is the sole owner of the patent and is governed by the terms of the trust agreement between the trustee and the several joint owners who may become beneficiaries of the trust. Their respective interests are in accordance with the provisions set forth in the trust agreement. While the trust arrangement provides the advantages of sole ownership of the patent, it has some weaknesses. One disadvantage is the cost of paying a fee that most trustees require for the service of acting as trustee.

The trustee may be a corporate trustee, such as a bank, or it may be an individual. In fact, it may be one of the joint owners acting as trustee for the other joint owners and thus holding complete title. The trust agreement would require the one joint owner acquiring the legal title of the other owners to act, and to divide income, in accordance with the terms of the trust agreement. Having one joint owner act as trustee for the other joint owners and thus hold complete title is a variant of the arrangement whereby the holder of full title in a patent, instead of assign-

ing a part interest in the patent to another, contracts to divide the proceeds received from the patent.

Quite often a contract to divide proceeds received from a patent is confused with a contract to divide ownership of the patent itself. You may find in many cases in which a patent is held wholly by one person who is to compensate others in some way, that the practical thing to do is to leave complete title in that one person. The others may then be compensated by means of a contract among all parties whereby proceeds that are received, whether by way of license royalties or by way of sale price, are to be divided in an agreed proportion. This, of course, leaves control in the hands of the person holding complete title to the patent.

In the arrangement of having all joint owners assign their respective interests to a trustee, there is a further disadvantage. This is the relative inflexibility of the trustee in meeting all situations. The trustee is bound by the terms of the trust agreement and cannot deviate from the provisions outlining the powers and duties of the trustee. There may be a certain inertia and lack of aggressiveness on the part of the trustee in promoting the licensing of the patent and the making of royalty-producing arrangements. A trustee may be more passive and less bold than the individual patent owner having title, control and the direct incentive to promote the patent. These weaknesses of the trusteeship arrangement might be minimized by the beneficiaries of the trust finding prospective licensees, introducing the prospective licensees to the trustee, and entering into the negotiations so as to aid the trustee in consummating a license agreement. You might draft appropriate provisions in the trust agreement to allow for consultations in connection with the promotion of the patent and granting of royalty-producing licenses.

A further problem may arise in having a trustee hold title to a patent when there is infringement of the patent by others. The trustee may not be as vigorous as desirable in going after infringers and prosecuting infringement suits. The caution of the trustee may be understandable in view of the expense of infringement litigation that may be incurred and the lack of funds on hand to meet the possible expenses. You should include suitable provisions in the trust agreement to cover the situation of possible patent infringement.

Unified Title Desirable

There are practical advantages to having full ownership of a patent vested in one entity, either a person, corporation or trustee, in addition to the legal need for avoiding the previously described risks and dangers of joint ownership of patents. One of these practical advantages is the convenience and facility of negotiating and executing a license agreement when the discretion and control required is not divided. You will probably find it difficult and awkward at times to work out details and terms of a license contract when control and authority are scattered among several owners, and particularly if they are not all present to take part in the negotiations. When one person owns a patent or when joint owners have assigned their respective interests to a corporation or to a trustee, then there is the unified control and authority which facilitates the negotiation and execution of a license agreement without the necessity of referring back and forth between several owners.

Another practical advantage to unity of patent ownership is found in the requirements of patent litigation. In infringement suits one hundred percent of ownership must be represented in the action against the infringer. If all joint owners of the respective interests in a patent are not joined as parties to an infringement suit, the suit cannot proceed and the infringer goes free. A meritorious claim for infringement might be lost because of the unwillingness to join in the suit by the owner of a small fractional interest in the patent. When ownership is unified in one person, in a corporation, or in a trustee, then there is no question but that full title is residing in the plaintiff and that the claim will not fail for proper parties plaintiff.

Therefore, both for avoidance of the dangers and risks of joint ownership of patents and for practical convenience, you should attempt to obtain unified rather than divided ownership of a patent. Recognition of the problems will dictate the necessity for, and the facts in each case will indicate the preferred manner of, arriving at ownership in one legal entity.

Record Title Not Dependable

Another peculiarity of patents as property should be considered by you in handling your clients' transactions involving patent rights. The Patent Office transfer records cannot be regarded in the same way as the county recorder's transfer records covering

deeds, mortgages and other instruments affecting property subject of state law. You cannot wholly depend upon the transfer records of the Patent Office to ascertain present title and rights in a patent because of the time lag permitted and because of the limitation on the types of instruments that must be recorded.

The patent transfer recording statute (35 U. S. C. 47) provides for the recording of absolute assignments, mortgage assignments, and territorial assignments (called "grants"). These instruments, when in writing, are recordable in the transfer records of the Patent Office. The statute does not require the recording of license agreements because licenses do not convey an "interest" in the legal title to a patent.

An unrecorded assignment (absolute, mortgage or territorial) is always good between the parties. However, when a third party enters the picture (a) who is a subsequent purchaser, that is, who received an inconsistent assignment of the same patent after the earlier assignment; and (b) who is a purchaser for value, that is, did not receive the patent as a gift; and (c) who had no notice of the earlier assignment, that is, an innocent party, then the first assignee of the patent should comply with the recording statute if the first assignee is to prevail in a controversy over title between the two assignees. The first assignee complies with the statute by recording his assignment at any time within three months from the date of the assignment to him. If the first assignee should not record his assignment within three months, he can still prevail if he records his assignment prior to the actual making of the later inconsistent assignment. However, the first assignee can always wait until just before the expiration of the versy with the second assignee over title to the patent. It would therefore seem that in purchasing a patent from a stranger or irresponsible person, you canot depend upon the Patent Office transfer records as of that moment to ascertain true title because of the permitted lag of three months.

Licenses Are Hidden Encumbrances

The other defect in the transfer records as a reflection of all the pertinent facts is that the recording statute does not require all licenses to be recorded. If a prior owner of a patent issued licenses under the patent, those licenses continue in force and effect after assignment of the patent even though the purchaser

of the patent had no knowledge of the outstanding licenses. Very possibly your client would not purchase a patent if it were known that licenses had previously been granted under the patent. Although the Patent Office under its rules permits licenses to be recorded upon its transfer records, the statute (35 U. S. C. 47) does not require such recording of licenses. Therefore, the recording of a license does not give constructive notice to others of its existence. The Patent Office transfer records thus cannot be depended upon to give legal notice or knowledge to others of all outstanding licenses.

Sometimes there are licenses that are implied by law and not only are these implied licenses not recorded, but they are not in writing and the original patent owner may not have recognized or realized that the implied license existed. An example of a license implied by law is the so-called "shop right" sometimes arising when an employee makes an invention with the time, equipment, material or other aid of his employer.

Possible Precautions

Because of the defects in perfect title to a patent that may arise notwithstanding the recording statute, some precaution may be desirable in transactions you handle which involve transfer of patent rights. Besides the transfer records, you might well consider (a) the degree of responsibility of the party from whom patent rights are acquired, (b) the possible inclusion of warranties as to title in the instrument transferring the patent rights, (c) the possible use of escrow arrangements requiring delay in delivering payment of the consideration, (d) a possible arrangement for payment of the consideration in time installments, either as fixed sums or percentage royalties, and (e) a possible provision permitting termination in the event defects in title and outstanding licenses or other unknown encumbrances appear.

A further fundamental characteristic of patents should be taken into account when you are handling transactions involving patent rights. Contrary to the express wording of the patent grant, the patent does not give the patent owner, and his licensee under him, the legal right to make and sell the device covered by the patent. This statement is true for two reasons. First, one would have the natural right to make and sell the device even if there were no patent laws in existence and one had no patent. Second, because of the right of exclusion given by a patent, one's right to make

and sell is always subject to prior unexpired United States patents having claims broad enough in scope to cover the device one proposes to manufacture. The device may be subject to an earlier unexpired patent, although it incorporates improvements upon which one has a later patent protecting the improvements. Therefore, contrary to what it says on the face of the patent, the patent only gives rights of exclusion. The relationship between patents covering the same device is one of the most misunderstood phases of patent law.

Nature of Patent Rights

The patent grants three rights, these being (a) the right to exclude others from unauthorized manufacture in this country of devices covered by the claims of the patent, (b) the right to exclude others from unauthorized use in this country of devices covered by the claims of the patent, and (c) the right to exclude others from unauthorized sale in this country of devices covered by the claims of the patent. Invasion of any one of these rights by unauthorized manufacture, by unauthorized sale, and/or by unauthorized use, is an act of patent infringement. Therefore, a patent really provides a right of action against an infringer of these rights of exclusion.

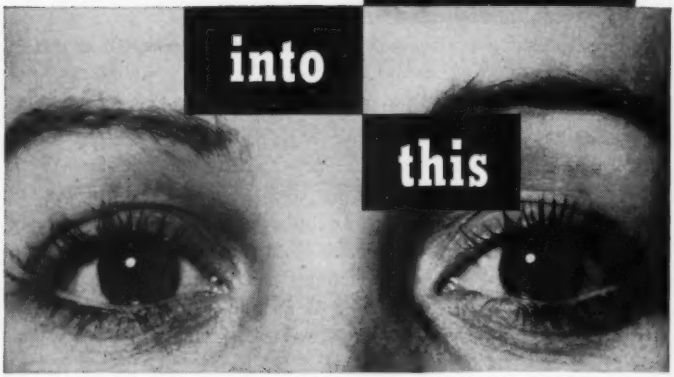
It thus becomes apparent that one purchasing title to a patent or acquiring a license under a patent may not necessarily have a right to manufacture, use and sell the patented devices. One's commercial activities will be subject to the superior rights of the owner of any unexpired patent having dominating claims. If one knew of this possibility, one might not purchase a patent or acquire a license under it, or else one would, in addition, acquire title to or rights under the earlier dominating patent.

The necessity for a thorough investigation, survey and appraisal in such transactions is understood when this fundamental nature of a patent is fully appreciated. From a practical point of view, the whole situation should be looked into at one time rather than piecemeal. For example, before the deal on the later improvement patent is finally closed, it may be desirable that the rights under the earlier dominating patent be acquired, particularly if a considerable investment is involved.

Certainly, one should not invest in tools, dies, equipment, advertising and promotion before one has been competently assured that the manufacture, use and sale of the device to be made will not

On behalf of your clients

It will pay you to **look into this**



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infringe any unexpired patents. Your client, having purchased or obtained a license under a patent, cannot by such acquisition have assurance of being able to commercially exploit the invention covered by the patent. If possible infringement of other patents is discovered before a large investment is made in equipment and inventory and before dies and tools are made, it will place the prospective manufacturer in a much better tactical position in negotiating for rights under the patent that would be infringed. After your client has proceeded with manufacture and has a considerable investment already made, then he is not as free in negotiating for rights. Manufacture can be discontinued only at a loss, and change of design to avoid infringement, even when possible, is usually costly. Therefore, the possibilities of infringement should be ascertained as early as possible.

Acquiring title to a certain patent or acquiring a license under it may lull one into a false sense of security if one mistakenly believes that one can automatically manufacture the device free of possible infringement. Those acquiring patent rights should keep in mind that they may have to acquire additional patent rights before being free to make and sell the proposed devices.

Thus, in all transactions involving the purchase of title to patents and the acquisition of license rights, the peculiar character of a patent should be recognized. The patent only grants a statutory right to exclude. The license by contract grants immunity from suit for infringement of the licensed patent, but not of other patents. These fundamentals should be taken into account in all arrangements affecting patent rights and their acquisition.

These peculiarities of patents as property in relation to (a) dangers of joint ownership, (b) risks of depending solely on the transfer records to ascertain title, and (c) possible losses arising from infringement of earlier unexpired patents that dominate the patent to which rights are acquired, are unique characteristics that should be appreciated by lawyers handling transactions involving patent rights.

The Board of Governors of the **Oregon** State Bar, having examined the handbook for jurors published by the **Minnesota** State Bar, appointed a committee to draft a similar handbook for Oregon jurors.

TAXATION REMINDER

(Continued from page 320)

tative is subject to tax. Added to this is the further confusing fact that "sales in insignificant amounts" are not even to be counted in determining whether there have been three sales in any twelve-month period.

It seems clear that no attorney for an executor or administrator can dismiss, at least with any degree of certainty, the possibility that the representative may become a retailer and subject to the sales tax. You may very well decide that the $1.00 permit fee and the additional work required to file the necessary returns is inexpensive insurance against sales tax penalties plus additional costs and the representative's possible personal liability for the same.

If the personal representative, pursuant to the court's order, is actually operating a going business subject to the sales tax or, because of the three or more sales rule he has obtained a seller's permit, as his attorney and as an officer of the court you have at least one more duty with respect to his sales tax obligations. Before the final account and petition for decree of final distribution are filed, you should instruct the executor or administrator to file his final sales tax return and obtain a sales tax clearance. With this sales tax clearance filed in the probate proceedings, the representative can, insofar as any sales tax liability is concerned, safely inform the court that all taxes due are paid without fear of misrepresentation or personal liability.

This short article is not intended to cover all the various facts of sales tax in probate but will have served its purpose if it alerts attorneys to the fact that there are such problems existing in almost every probate sale of tangible personal property.—

LAW BY TELEPHONE

(Continued from page 326)

the latest case on assault, little realizing that he would be in danger of assault, battery and mayhem, if he were within reach of the infuriated Simpson.

To meet this situation I suggest telling your telephone operator that it really makes little difference who gets on the wire first;

that though your time is priceless the other man thinks his is too; and that your operator should follow the course which will make the other office feel most content and therefore most likely to agree to your proposals. Of course, if the same office takes advantage of your good nature too often, you can always reverse your instructions and then enjoy the sense of power which it gives a man to drive two women to battle with their bare wits.

As to the use of the telephone generally, it seems to me that for serious matters it cannot take the place of a face to face conversation in which you cannot only place your interlocutor with his face toward the light and watch the play of emotion on his mobile countenance, but you can feel relatively unhurried, especially if you are in another man's office and he is too polite to hasten your departure. I have an occasional client who illustrates my idea well. When he asks for advice it is almost always by telephone and the inquiry will be something like this: "I'm a trustee for my second cousin and I want to sell a house for half as much again as it would have been worth on the day it was put into the trust if it hadn't burned down the night before. Will there be an excess profits tax on the sale, and can my cousin complain because the insurance policy is not perpetual?" If you have that kind of client face to face, you can, with patience, make some sense out of his story.

Incidentally, if there is to be a face to face discussion, some men regard it as a point of honor to crow on their own dung hills wherever possible. I don't think anyone is really impressed by this. When you want help or information, you should certainly make a point of going to the other man's office to get it. When he wants help or information from you, it is fair to expect him to come to you, unless he is a good deal older lawyer than you are. If you are both on an equal footing, do whatever is natural and easiest for both, but don't emulate the barnyard rooster.

Many of us grew up in houses without telephones and there are probably members of our Bar who started practice peacefully with no office telephone. How many inconsequential messages were never delivered; how many interruptions were avoided; how many briefs were better because concentration was more easily attained. But let us recognize our blessings while we have them. We cannot yet see the stubborn and unlovely face of the op-

ponent to whom we are telephoning, nor can he see the wink with which we accompany our grave statement to him of the weakness of his position. When practicing law by television becomes possible, may I have the fortitude to stick to the humble telephone with all its shortcomings.

SILVER MEMORIES—JUNE, 1927

(Continued from page 330)

lished. A Bellanca monoplane piloted by **Clarence D. Chamberlin,** with owner **Charles A. Levine** as passenger, flew the Atlantic from New York City to Germany. Commander **Francesco de Pinedo,** Italian four-continent aviator, flew from the Azores to Lisbon, Portgual. From Oakland two army officers, Lieuts. **L. J. Maitland** and **Albert Hegenberger,** flew a Fokker to Hawaii in the longest over-water flight yet attempted, 2,025 miles in 26 hours. From Long Island, Commander **Richard E. Byrd,** Lieut. **George Noville, Bert Acosta** and **Bernt Balchen** flew to Ver Sur Mer, a French sea coast resort, covering a distance of 4,200 miles.

* * *

A Colorado Supreme Court order has officially ousted Judge **Ben B. Lindsey** after 25 years as judge of the Denver Juvenile Court.

* * *

Coincident with the celebration of King George's sixty-second birthday anniversary, the Soviet Charge d'Affaires and others had a send-off by labor sympathizers when, in accordance with the break in the British relations with Moscow, they quit London for Russia.

(Continued on page 353)

OPINIONS OF THE COMMTTEE ON LEGAL ETHICS, LOS ANGELES BAR ASSOCIATION

OPINION NO. 188
(February 7, 1952)

CONTINGENT ATTORNEYS' FEES IN DIVORCE CASES—It is improper and unethical for an attorney to be a party to a contingent fee contract in a divorce case. Such contracts are contrary to public policy and therefore void, regardless of whether relating to payments for support or divisions of property by court orders or pursuant to property settlement agreements.

An attorney inquires of this committee and states:

> "a client of mine has expressed an unwillingness to pay a straight fee for the divorce she is interested in obtaining. She suggests a contingent fee. I have advised her against such an agreement for her own benefit and also as a probable violation of the ethics of the Bar Association.
>
> "I realize that a fee based on the contingency of obtaining a divorce is improper. Would it be improper to have a contingent fee relating only to the property that is recovered by way of a property settlement agreement or order of the court?"

The general subject of contingent fees is briefly discussed in Opinion 106 of this committee. However, in that opinion there is no discussion of the special considerations of public policy which arise in divorce and other domestic relations matters.

It is clear that legal considerations, as well as ethical considerations, are presented here. The two are not necessarily separate and apart from each other. Indeed, in this instance they are so interrelated that the answers to the legal questions immediately settle the ethical problems. It, therefore, becomes pertinent to refer to the law governing contingent fee agreements in divorce matters.

As stated, special considerations of public policy exist in this field of the law of domestic relations. In California, *Newman v. Freitas*, 129 Cal. 283, 61 P. 907 (1900), stands as the earliest definitive decision on the subject. There, on the basis of a contingent attorney's fees agreement with the plaintiff in a divorce action, recovery was sought not only of one-third of the property awarded to the plaintiff in the action, but also one-third of the allowance for permanent support. The Supreme Court refused to enforce the contract and stated (129 Cal. at 289, 292):

"The contract is, in its nature, against the policy of the law and contrary to good morals.

* * *

"Contracts for contingent fees paid attorneys were not tolerated at all at common law, but in this and perhaps most of the states such contracts are allowed, if not favored. This is on the ground that otherwise a party, without the means to employ an attorney and pay his fee certain, and having a meritorious cause of action or defense, would find himself powerless to protect his rights. In divorce cases, however, the law has taken care that the wife shall not be without assistance in proper cases either to prosecute or defend such actions. The court in its discretion may require the husband to pay as alimony any money necessary to enable the wife not only to support herself, but also to prosecute or defend the action, and is given ample power to enforce such order. The reason or necessity therefor does not exist in such cases as in the others for allowing contingent attorneys' fees, and where the reason ceases the rule or law also ceases."

The rule declaring void all contingent attorney's fee agreements in divorce cases has been consistently adhered to in this state. It makes no difference whether the property and support awards in such actions arise from direct determinations by the courts or through so-called property settlement agreements. Such contingent fee contracts are void under all circumstances.

Hill v. Hill, 23 Cal. (2d) 82, 142 P. (2d) 417 (1943);

Kyne v. Kyne, 60 Cal. App. (2d) 326, 140 P. (2d) 886 (1943);

Theisen v. Keough, 115 Cal. App. 353, 1 P. (2d) 1015 (1931).

It is the duty of all attorneys to uphold the law and the honor of the profession. Therefore, an attorney cannot ethically enter into any fee arrangement which is contrary to established public policy and void. Yet, if the question here were to be answered in the affirmative, that is exactly what the attorney would be doing.

Accordingly, the question submitted must be answered in the negative. It would be unethical for an attorney to enter into a contingent fee contract with a plaintiff in a divorce case even though the fee relates only to property recovered.

This opinion, like all opinions of this Committee, is advisory only. (By-Laws, Art. VIII, Sec. 3.)

OPINION NO. 189
February 15, 1952
PRACTICE OF LAW—PARTNERSHIPS—LETTERHEAD.

An arrangement by a local attorney with a New York attorney, whereby the latter would be the "International Representative" of the former, and would be designated as such on the letterhead of the California attorney, is improper. The scope of the term "International Representative" is too broad.

A member of the Los Angeles Bar Association requests the committee to express an opinion as to the propriety of the following arrangement:

> "Under a proposed arrangement it is desirable that the *name* and *address* of a *New York lawyer* should be included on my letterhead with the designation 'International Representative.'"

Associations between lawyers who are not all admitted to practice in the same state is sanctioned by Canon 33 of the American Bar Association. That Canon, however, specifically requires that "care should be taken to avoid any misleading name or representation which would create a possible impression of the professional position or privileges of the member not locally admitted."

It is the conclusion of this committee that the designation "In-

ternational Representative" goes too far, because there is no method under which New York counsel, or any other practitioner, may practice in all courts in all parts of the globe. There would be no objection to the use of such a name providing the letterhead is not misleading. For instance, the New York lawyer's name and address might be followed by something to the following effect: "Member of the New York Bar." It should clearly indicate that the New York member does not have California privileges (assuming this is the case).

This opinion, like all other opinions of this committee, is advisory only.

SILVER MEMORIES—JUNE, 1927

(Continued from page 348)

Eugene D. Williams and **Benjamin S. Parks** have formed a new law partnership for general practice.

* * *

At Boston, following a 21 gun salute and the notes of the national anthem, 2,000 stood in silence as the old frigate Constitution was brought into dry dock at the Navy Yard, marking another memorable day in the fighting ship built in 1797. It was in 1833 that "Old Ironsides" was first hauled into dry dock for reconditioning. Oxen pulled her into the cradle.

* * *

The cornerstone of the new City Hall will be laid this month. Ground was broken for the new edifice in March, 1926, and it will be completed this fall at a cost of $5,000,000.

* * *

A parrot at Regents Park, London, laid an egg on its 100th birthday.

* * *

A lawsuit which has lasted more than 200 years was recently ended. The litigants were two Siberian villages, Pushkorevo and Gorbunovka near Tomsk. The suit arose over land claimed by both villages. All documents and records have remained intact over the years. Catherine of Russia's order and other documents, among them the original agreement signed between the villagers and the Tartar authorities, who were once rulers of Siberia, are said to be kept by Grechanin in an iron chest which also serves as his bed.

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- ★ To manage charitable funds.

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Bootleggers must file federal income tax returns on their illicit profits, the U. S. Supreme Court has ruled, in reversing a circuit court of appeals decision which had held that the secrecy attached to income tax returns did not equal the constitutional immunity providing that no person may be compelled to give incriminating evidence against himself. Mr. Justice Holmes, for the Court, said that "it would be an extreme if not an extravagant application of the 5th Amendment to say that it authorized a man to refuse to state the amount of his income because it had been made in crime."

An advertisement in the L. A. Daily Journal claims that "To hear a De Forest W-5F Radiophone is to revise your entire idea of radio. The 12-inch suspended cone-type power amplifier positively gives reproduction such as you have never heard before. Price $250. complete, except for tubes and batteries."

* * *

A droll will of an Italian philanthropist has been probated in the Italian courts. His fortune, which for years was the hope of creditors and relatives, was left entirely to charity, disposing: "To my son I leave the pleasure of earning a living. For 25 years he thought this pleasure uniquely mine. He made a mistake.

"To my valet I leave my clothes which he has methodically stolen for several years, and also my fur-lined overcoat which he thought he used without my knowledge when I was away.

"My chauffeur gets my automobile which he has completely ruined. I desire to give him the satisfaction of finishing what he has started.

"I leave my friends the advice to find a man to take my place in their association."

SO YOU'RE GOING TO BE A JUDGE

By Joseph H. Hinshaw,
President, Illinois State Bar Association

Reprinted from the March, 1952, issue of the *Illinois Bar Journal*

Dear Bill:

So you're going to be a Judge! Congratulations are in order, and I extend mine with sincere enthusiasm.

I cannot say that a practicing lawyer should really envy you. Many lawyers have chosen their profession because they enjoy

being independent, and few people are really more secure in their freedom than the American lawyer with sufficient practice to make a living. He is in the best position to protect that freedom. One client may desert him, but another fills the gap. The longer he practices, the more secure he becomes, and he can make a living as long as he can think. There is no law which forces him to retire, and no political landslide will take away his job.

The lawyer can be himself. He does not have to be a social isolationist. His family does not have to live apart. He goes where he pleases, and says what he thinks. He need not always consider what the public or the voters may think of what he says. He will not have news reporters of the opposite political faith watching to see whether he is on the job, and making public criticism of every move he makes. He is not constantly bombarded by people asking favors he cannot grant. If he is a good lawyer, he probably makes more money than the Judge; is not hounded by every public and private charity for donations, and does not have a large amount of his income annually levied upon for political contributions. The lawyer usually knows who his friends are, while the Judge is the victim of so much lip service that real friends are difficult to determine.

Of course, as a Judge, you will have an unexcelled opportunity for doing good, righting wrongs, protecting the liberties of the innocent, building firm confidence in the bench and lifting the general standing of the bar in your community. Your conduct will affect every one of our citizens. These opportunities the lawyers envy you.

You start out with a reputation for the greatest quality that a Judge can have—honesty. All you have to do is to keep it. No temporary gain, political or financial, can possibly recompense you for soiling that quality. The honest decision will not always be the popular or the expedient one, but it is the only one which will bring justice and bring peace of mind to you.

Every good Judge must have patience in abundance, and you will need all you can summon. When time is precious, an overenthusiastic lawyer will argue at length in favor of a legal proposition which you deem foolish, but you must listen, and with an open mind. Sometimes the lawyer may be right, you know. You were put on the bench to exercise judgment and self-control, and often to set right, persons who have neither judgment nor self-control.

Righteous indignation you are entitled to, but anger you are not. When anger begins to pile up in your mind, walk off the bench into chambers and count to ten. Like a boy with his foot on the accelerator of a Cadillac, it will be tempting to release the immense power which you have, but remember it is easy to crush the helpless or foolish person before you. The consequences of a Judge's anger can be terrible. A show of anger is a show of weakness. Grant petitions for change of venue with a smile. Many honest men have prejudices and few of them are aware of it. Do not, by a show of temper, convince every one in the courtroom that the petition for change of venue is justified.

Do not pre-judge any case, and remember to follow the law as it is, not your personal pleasure in the matter.

You cannot judge every man by your own background, and if you have any secret prejudice against any class or nationality, wash it right out of your mind before you take the oath.

Frequently you will find it easy to curry favor with the families of guilty persons by giving light sentences, where heavy ones are deserved, but this is always done at the expense of law enforcement, and the respect of people generally for law and order. The law is only as strong as those who enforce it.

No matter how long you are on the bench, please do not forget that there was a time when you made a living practicing law, and do not lost respect for the bar. Members of the bar are officers of your court. Uniform courtesy, on your part, to the lawyers, will help you gain every legitimate objective you may pursue as a Judge.

Lawyers will appreciate it if you are reasonably prompt in opening court. If you have enough motions or other business to take half a day, please do not keep all the lawyers waiting through the whole call. Announce that the second half of the call will be heard at a later hour, and give the lawyers in the second half a chance to make use of their time, instead of uselessly polishing hard oak benches with their pants. You should know that lawyers have only time to sell.

Unless court calendars get even farther behind, you will have to help lawyers settle cases. Be patient with them while they talk, but do not "ride" a lawyer during the trial because he refused to settle a case which you think should have been settled. Some-

times justice demands that a case be fought out.

If a lawyer must be reprimanded, do it in chambers where the jury will not be prejudiced and the client will not suffer. You will find it easy to send the jury out on the pretext that you must hear a motion, and then do such disciplining as may be necessary. Do not reprimand both lawyers if only one is to blame.

If you believe that a lawyer has won his case through unethical conduct, take his victory away from him. Reprimands are more than useless to cure such injustice. The only way to prevent unethical conduct in a trial is to convince such an attorney that he cannot hold on to a victory thus obtained.

Order in your court room will depend upon you. If the lawyers respect you, they will help you maintain order. It cannot be maintained by an over-officious bailiff, constantly rapping his gavel on the furniture and making noisy threats. Such a performance only develops contempt in the breast of every self-respecting citizen.

If you expect a jury to follow the law, you must read the instructions clearly and slowly, so that they can be understood. Do not assume that a jury will disregard instructions, nor proceed upon the theory that the jury does not know what it is doing.

Of course, I know you will work, but do not try to kill yourself. Some very fine judges have literally worked themselves to death, trying to dispose of all the matters on the docket. You cannot try all the cases, and you cannot right all the wrongs. You might just as well try to dip Lake Michigan dry. If the legislators won't provide enough judges, you have no duty to work yourself to death trying to make up for the poor judgment of the legislators in not furnishing enough.

As a Judge you should not have to hurry about anything. Your business is deliberation. Please do not try to hurry the lawyers during a trial. It will not promote justice, and justice, not speed, is the important objective. The harder you press, the more inhuman you will become. You owe your community your service and your good judgment, but not your life, nor your humanitarian sensitiveness. May you always be right. If you always try to be right you will not go far wrong. At least every lawyer in the community hopes you will be a good Judge.

Sincerely,

J. H. HINSHAW.

MRS. MARIAN G. GALLAGHER MARCH 1951
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